

Minutes

Bar Harbor Town Council

August 5, 2008

- I. **CALL TO ORDER** – 7:00 P.M. – In attendance were: Councilors Ruth Eveland, Paul Paradis, Sandy McFarland, Julia Schloss, Greg Veilleux, Robert Jordan, Jr.; and Town Manager Dana Reed. Councilor Garland arrived at 7:36 p.m.

A. **Excused Absence(s)** – There were none.

II. **APPROVAL OF MINUTES:**

A. *July 15, 2008 – Special Meeting*

B. *July 15, 2008 – Regular Meeting*

Mr. Paradis, with second by Mr. McFarland, moved to approve the minutes of the July 15, 2008 special and regular meetings as presented. Motion passed 6-0.

- III. **ADOPTION OF AGENDA** – Mr. Paradis, with second by Mr. McFarland, moved to adopt the agenda as presented with the exception of removing item J. Motion failed 2-4 (Nay: Mr. Jordan, Mr. Veilleux, Ms. Schloss, Ms. Eveland).

Ms. Schloss, with second by Mr. Veilleux, moved to adopt the agenda as presented. Motion passed 6-0.

- IV. **FINANCIAL STATEMENTS** – Mr. Paradis, with second by Ms. Schloss, moved to accept and file the financial statements as presented in the Finance Directors memo dated July 25, 2008. Motion passed 6-0.

V. **PUBLIC HEARINGS:**

- A. **Wharf License: Ruger** – *Public hearing on and possible approval of the application of Mr. William B. Ruger, Jr. for a pier and float at 145 Eden Street, tax map 224, lot 19.* – There being no comments from the public; Mr. Paradis, with second by Ms. Schloss, moved to approve and sign the Wharf License of Mr. William B. Ruger, Jr. as proposed and enter it into the minutes. Motion passed 6-0.

**Wharf License
William B. Ruger, Jr.**

Pursuant to the provisions of MRSA Title 38, Chapter 9, Section 1022, William B. Ruger, Jr., has applied for a wharf license to replace an existing private pier with a 5 foot by 75 foot pier, and install a 3½ foot by 50 foot ramp and a 16 foot by 24 foot float at 145 Eden Street, Bar Harbor, Maine, (Assessor's Map 224, Lots 19 & 20) as described in his wharf license application dated July 8, 2008.

After examining the application, receiving a favorable recommendation from the Harbor Committee, hearing all parties interested in said application, and considering the testimony and all other evidence adduced at a duly noticed and advertised public hearing, the Bar Harbor Town Council, makes the following findings of fact:

1. That the erection of a pier in Bar Harbor by William B. Ruger, Jr. as outlined in his application would not be an obstruction to navigation;
2. That the erection of said pier will not injure the rights of others; and
3. That the proposed pier, if built in accordance with the plans presented, will not adversely affect or impair the interest of the Town of Bar Harbor.

For the foregoing reasons, the Municipal Officers of the Town of Bar Harbor, pursuant to 38 MRSA 1022, hereby grant to William B. Ruger, Jr. a wharf license to erect and maintain a pier, ramp and float as described above and in his application dated July 8, 2008.

VI. REGULAR BUSINESS:

A. Board & Committee Appointments:

1. **Design Review Board** - *Possible appointment of Todd Hardy to a term expiring either on June 30, 2009 or June 30, 2011.* – Mr. Jordan nominated Todd Hardy to a seat on the Design Review Board with a term expiring June 30, 2011. Mr. Paradis, with second by Ms. Schloss, moved to cease nominations. Motion passed 6-0. Mr. Hardy was duly appointed to the three year term by unanimous vote.
2. **Conservation Commission** – *Possible appointment of Patrick Watson to a term expiring June 30, 2011.* – Mr. Paradis nominated Patrick Watson to a seat on the Conservation Commission with a term expiring June 30, 2011. There being no further nominations; Mr. Paradis, with second by Ms. Schloss, moved to cease nominations. Motion passed 6-0. Mr. Watson was duly appointed to the three year term by unanimous vote.

B. Board & Committee Consultations: Economic Development Task Force – *Discussion of current projects, future plans and any support needed from Town Council* – Chair Pat Samuel outlined the objectives of the EDTF and their progress. The task force continues to meet monthly during the summer season and will resume two meetings a month this fall.

C. Affordable Housing – *Request of the Planning Board for creation of an Affordable Housing Task Force.* – Following discussion, Mr. Paradis, with second by Mr. Veilleux, moved to take no action on this request. Motion passed 7-0. Following further discussion, Mr. Paradis, with second by Mr. Veilleux, moved to request that the Planning Board and the Housing Authority Commission meet to discuss the issues outlined by the Planning Board to formulate a plan to move forward and report back to Council within 6 months. Motion passed 7-0.

D. Ethics Ordinance – *Review and possible introduction of an amendment to institute a training requirement and resolve ambiguous and conflicting language.* – Mr. Paradis, with second by Ms. Schloss, moved to introduce the

Ethics Ordinance Amendment dated July 29 and to schedule a public hearing for September 2. Motion passed 6-1 (Nay: Mr. Jordan).

- E. Charter Commission** – *Possible approval of an Order to place the question of formation of a Town Charter Commission on the November ballot.* – Mr. Jordan moved to take no action on this item. The motion failed due to lack of second. Following brief discussion, Mr. Paradis, with second by Ms. Schloss, moved to adopt and sign the Order Directing that a Charter Commission be formed, subject to ratification by the November Town Meeting. Motion passed 5-2 (Nay: Mr. Jordan, Mr. Garland).

**Order
Of The Bar Harbor Town Council
Directing That A Charter Commission Be Formed,
Subject To Ratification By The November Town Meeting**

Whereas, it is agreed that Town Meeting voters should consider possible revision of the Bar Harbor Town Charter or replacement of the current Town Charter with a new Town Charter; and

Whereas, State Law provides a process whereby a charter is to be studied, amended and/or revised; now therefore, be it

Ordered that a Charter Commission be formed as provided by title 30-A MRSA section 2102(1), subject to ratification by the voters; and, be it further

Ordered that the following articles be placed on the warrant for the town meeting to be held on November 4, 2008:

Article 2 – CHARTER COMMISSION CREATION – Shall a Charter Commission be established, pursuant to 30-A MRSA section 2102(5), to review the Town Charter and advise the voters what, if any, Charter amendments or revisions the Commission recommends?

Explanation: If passed by the voters, this article will create a Commission with the limited authority to study the Town Charter and recommend any Charter amendments or revisions that the Commission believes to be advisable. Any changes to the Town Charter would have to be approved by Town Meeting voters on a secret ballot before taking effect.

Article 2A – ELECTION OF CHARTER COMMISSION MEMBERS – To elect six Charter Commission members as required by State Law 30-A MRSA section 2103.

- F. Sidewalk Graffiti** – *Request of Councilor Veilleux for discussion of the increasing amount of advertising being chalked on Town sidewalks.* – Mr. Paradis, with second by Mr. Garland, moved to direct staff to increase vigilance to deal with sidewalk graffiti. Motion passed 7-0.

- G. Parade & Street Closure** – *Request of Councilor Jordan for permission to allow the Chamber of Commerce to hold a parade and street closure on November 22 for a Bed Race during the annual Pajama Sales.* – Mr. Jordan, with second by Mr. Veilleux, moved to authorize the Chamber of Commerce to hold a parade and street closure on November 22 for a Bed Race with the details to be approved by the Chief of Police. Motion passed 7-0.
- H. Town Hill Speed Limits** – *Request of Councilor Garland for consideration of a proposal by Richard Simis to reduce speed limits in Town Hill.* – Following discussion, Mr. Garland, with second by Mr. Veilleux, moved that Council request the MDOT to change the speed limit in Town Hill subject to a public hearing on September 2, 2008. Motion passed 7-0.
- I. Municipal Building Renovations** – *Request of Councilor Jordan for discussion and possible action regarding improvements/changes to the municipal building.* – Councilor Jordan requested if there were any funds remaining from phase I of the project, that it be used to review energy efficiency in the building before spending it elsewhere. There was no action taken.
- J. November 4th Special Town Meeting: Land Use Ordinance Amendment** – *Request of Councilor Jordan for consideration and possible signing of Orders to place on the ballot:*
1. *A (Dark Sky) Lighting Ordinance without a sunset provision.* – Mr. Jordan, with second by Mr. Veilleux, moved to adopt and sign the Council Order for the Lighting Ordinance without a sunset provision. Motion passed 6-1 (Nay: Mr. Paradis).

Order

Of the Bar Harbor Town Council

For the November 4, 2008 Town Meeting

It is hereby ordered that the following article be placed on the special town meeting warrant with voting thereon to be held by Australian ballot.

Warrant Article

LAND USE ORDINANCE AMENDMENT –Lighting Ordinance – Shall an Ordinance dated August 5, 2008 and entitled “An amendment to add new lighting requirements for new development projects that incorporate dark sky lighting standards” be enacted?

Lighting Ordinance

An amendment to add new lighting requirements for new development projects that incorporate dark sky lighting standards.

The Town of Bar Harbor hereby ordains that Chapter 125 of the Town Code is amended as follows:

[Please Note: Old language is ~~stricken~~. New language is underlined.]

Chapter 125 , LAND USE ORDINANCE

ARTICLE V Site Plan Review

§ 125-66. Submission Requirements.

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- S. ~~Lighting. For existing and proposed exterior lighting, details indicating types of fixtures together with the manufacturers' specification sheets.~~

The Lighting Plan shall indicate the location of each current and proposed outdoor lighting fixture.

- (1) The lighting plan should include a Key to the proposed lighting that provides the following information:

- (a) Type and number of luminaire equipment (fixtures), including the "cut off characteristics", indicating manufacturer and model number(s).
- (b) Lamp source type (bulb type, i.e. high pressure sodium), lumen output, and wattage.
- (c) Mounting height indicated, with distance noted to nearest property line for each luminaire.

Types of timing devices used to control on/off and the hours set for illumination, as well as the proposed hours when each fixture will be operated.

- (2) Lighting manufacturer-supplied specifications ("cut sheets") that include photographs of the fixtures, indicating the certified "cut off characteristics" of the fixture.

(3) If requested by the Planning Department, an Isometric Foot-candle Distribution Diagram should be provided, plotting the light levels at the designated mounting heights for the proposed fixtures. Maximum luminance levels should be expressed in foot-candle measurements on a grid of the site showing iso foot-candle readings in every ten-foot square. The grid shall include light contributions from all sources (i.e. pole mounted, wall mounted, sign, and street lights.) This plan will need to be stamped and certified by a licensed professional, as an architect or engineer.

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§ 125-67. General Review Standards.

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Z. Lighting.

- (1) ~~Direct or indirect (glare or reflection) illumination shall not exceed 0.6 footcandle upon abutting residential properties or 1.0 footcandle upon any other abutting properties. For purposes of this subsection, abutting properties shall include properties that are separated from the lot being developed by a street, road or right of way.~~
- (2) ~~Lighting fixtures shall be shielded or hooded so that the lighting elements are not exposed to normal view by or do not create or constitute a hazard or nuisance to motorists, pedestrians or neighboring residents and so that the maximum apex angle of the cone of illumination is restricted to 150°.~~
- (3) ~~The style of the light and light standard shall be consistent with the architectural style of the principal building.~~
- (4) ~~The maximum height of freestanding lights shall be the same as the principal building but not exceeding 25 feet.~~
- (5) ~~Spotlight type fixtures attached to buildings should be avoided.~~
- (6) ~~Freestanding lights shall be so located and protected as to avoid being easily damaged by vehicles.~~
- (7) ~~Lighting shall be placed along streets and parking areas, at intersections and crosswalks, and where various types of circulation systems merge, intersect or split. Parking areas shall be illuminated with an average of 1.5 footcandles throughout. Intersections shall be illuminated with at least three footcandles.~~

- (8) ~~Pathways, sidewalks and trails shall be lighted with low or mushroom-type standards with illumination of sufficient intensity to provide for safe foot travel in otherwise dark conditions.~~
- (9) ~~Stairways, sloping or rising paths, and building entrances and exits require illumination sufficient to provide for safe foot travel in otherwise dark conditions.~~
- (10) ~~Lighting should be provided where buildings are set back or offset.~~
- (11) ~~String lights of a wattage greater than Christmas decoration lights shall not be permitted.~~

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Z. Lighting.

- (1) Purpose: To establish minimum requirements for outdoor lighting that increase visibility and public safety by controlling glare and preventing intrusion into adjacent properties and the natural environment. Voluntary best practices are recommended to promote energy conservation and preserve the town's night sky which is a natural resource and valuable component of the town's character.
- (2) Exemptions (with exception to lights that cause disability glare as noted herein)
 - (a) All lighting less than 1800 lumens
 - (b) Lighting of places of worship and flags, emergency, as well as approved sports lighting
 - (c) The temporary use of low wattage or low voltage lighting for public festivals, celebrations, and the observance of holidays is exempt from regulation except where these lights may create a hazard or nuisance from glare. Light trespass requirements remain in effect, and where possible, lighting should be full cutoff
 - (d) Lighting of signs in Appendix A listed as historic
- (3) Requirements
 - (a) Use of full cutoff fixtures: All lights greater than 1800 lumens shall be shielded to direct all light towards the ground so that the lighting elements are not exposed to normal view and do not create or constitute a hazard or nuisance to motorists, pedestrians or neighboring residents
 - [1] Fixtures shall conform with the Illumination Engineering Society (IES) Specification for Full Cutoff to ensure

lighting elements are not exposed to normal view (see the Guidelines for Lighting document provided by the Planning Department, which contains illustrations of currently available fixtures conforming with the IES specifications).

- [2] Disability Glare: Full Cutoff fixtures shall be used so as not to create or constitute a hazard or nuisance to motorists, pedestrians or neighboring residents in the opinion of the Police Department. High Intensity Discharge (HID) light sources causing Disability Glare shall not be directly visible to drivers.

- (b) Avoidance of light trespass: All light shall be directed away from adjacent properties. The light sources in flood and spot lights shall not be directly visible from adjacent properties. For purposes of this subsection, abutting properties shall include properties that are separated from the lot being developed by a street, road or right-of-way.

- [1] The maximum illumination of an adjacent parcel from light emitted from an artificial light source is 0.1 horizontal foot-candles and 0.1 vertical foot-candles when measured:

- [a] At five feet inside an adjacent residential parcel.

- [b] At 10 feet inside an adjacent commercial or industrial parcel.

- [2] No line of sight to a light source is permitted 5 feet or more beyond the edge of the public right-of-way or property line in a residential district by an observer viewing from a position that is level with or higher than the ground below the fixture.

- [3] Compliance is achieved with fixture shielding, directional control designed into the fixture, fixture location, fixture height, fixture aim, or a combination of these factors.

- (4) Additional Requirements for Commercial and Multi-family applications:

- (a) Signs and Advertising.

- [1] All illuminated signs shall be lighted by top-mounted lights pointed downward. No sign may be illuminated with fixtures not shielded from upward transmission of light.

- [2] Signs may be illuminated internally only by nonflashing lights that contain an opaque background and this provision applies solely for properties with frontage on Route 3 and 102. No internally lit signs are allowed in the Downtown

Business District. Any lights that flash, pulse, rotate, move, or simulate motion are not permitted.

[3] All lights shall be shielded to ensure that light sources are not directly visible to drivers or from neighboring properties.

(b) White string mini-lights meeting the requirements of Holiday Lighting are allowed as part of interior window displays, in trees, bushes, and shrubs as part of the landscaping, or under canopies as part of the regular lighting if they are compatible with the building.

(c) Lighting reviewed by the Planning Board or the Design Review Board shall ensure that the style of the light and light standard is consistent with the architectural style of the principal building.

(d) The maximum height of freestanding lights shall be the same as the principal building or be no higher than 25 feet, whichever is less.

(5) Recommended Best Practices: Recommended practices can be found in a Guidebook provided at the Planning Department.

(6) Non Conformance:

(a) All site plans and subdivisions filed after December 4, 2008 shall be in compliance with this section.

(b) Any luminaires that direct light toward streets parking lots or the water, that cause disability glare to motorists, cyclists, pedestrians or boaters shall either be shielded or redirected as per enforcement action under Section IX and shall not be subject to any non conforming protections.

(c) Any luminaire that replaces a nonconforming luminaire or any nonconforming luminaire that is moved must meet the standards of this ordinance.

§ 125-114 Design Review Standards.

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~~D. (2) Standards for outdoor lighting. The standards for exterior lighting are intended to manage the use of lighting to assure it is aesthetically pleasing and properly illuminating.~~

- (a) ~~No exterior blinking, flashing, or moving lights shall be located on any property or attached to the exterior of any building except public safety or warning lights.~~
- (b) ~~The use of wall mounted lighting such as "wall packs" is inappropriate unless it is shielded from view from public streets or is of a design that does not have a vertical lens.~~
- (c) ~~White string mini-lights meeting the requirements of § 125-67Z(11) are appropriate as part of interior window displays, in trees, bushes, and shrubs as part of the landscaping, or under canopies as part of the regular lighting if they are compatible with the building.~~
- (d) ~~The lighting of structural canopies such as gas station canopies shall not be used to attract attention to the business. Areas under structural canopies shall be illuminated so that the uniformity ratio (ratio of average to minimum illuminance) shall be no greater than 3:1 with an average illumination level of not more than 30 footcandles.~~
- (e) ~~Light fixtures located on structural canopies shall be mounted so that the lens cover is recessed or flush with the ceiling of the canopy.~~

§ 125-109. Definitions.

The following terms shall have the following meanings:

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FIXTURE - The assembly that holds the lamp (bulb) in a lighting system. It includes the elements designed to give light output control, such as a reflector (mirror) or refractor (lens), the ballast, housing, and the attachment parts.

FLOOD OR SPOT LIGHT - A light designed to "flood" a well defined area with light, with a reflector or optical assembly that concentrates the light output in a particular direction or spot.

FOOT-CANDLE ("FC") – The basic unit of luminance (the amount of light falling on a surface). Foot-candle measurements are made with a light meter. One foot-candle is

equivalent to the luminance produced on one square foot of surface area by a source of one standard candle at a distance of one foot.

FOOT-CANDLES (Average) - the amount of light measured between then brightest and the darkest areas. May be measured at ground level of 3 feet above the ground.

FOOT-CANDLES (Horizontal) – the measure of the illumination striking a horizontal plane.

FOOT-CANDLES (Vertical) – the measure the illumination striking a vertical plane.

FULL CUTOFF - A shielded fixture that directs all light towards the ground by preventing all transmission of light above a horizontal line as specified by the IES.

GLARE - The interfering brilliance of a light source at various viewing angles.

GLARE (Disability) - glare which reduces visual performance due to light scattered in the eye reducing the contrast of the image.

HID LIGHTING - High intensity discharge lighting, a family of bulb type including mercury vapor, metal halide, high pressure or low pressure sodium, which glow when an electric current is passed through a gas mixture inside the bulb.

HOLIDAY LIGHTING - Festoon type lights, limited to small individual low wattage bulbs on a string.

IES DEFINITION - The Illumination Engineering Society North America Lighting Handbook. The most recent edition shall be used for the definition of terms used in this ordinance but not defined herein. In the case of conflict with the terms of this ordinance the most restrictive definition will apply.

LIGHT (direct) - The light emitted directly for the lamp, off the reflector or diffuser of a luminaire.

LIGHT (indirect) - Direct light that has been reflected or scattered

LIGHT SOURCE - The lamp or enclosing bulb or reflective enclosure.

LIGHT TRESPASS - The light projected onto a property from a fixture not located on that property.

LUMEN – A unit used to measure the actual amount of light that is produced by a light source. The lumen quantifies the amount of light energy produced by a lamp at the lamp, not by the energy input, which is indicated by the "wattage". For example, a 100 watt incandescent light produces 1800 lumens, but a 70-watt high-pressure sodium lamp produces 6000 lumens. (Lumen output is listed by the manufacturer on the packaging.)

LUMINAIRE - The complete lighting fixture, including the lamp, the housing, and optics.

OUTDOOR LIGHTING - The night time illumination of an outside area or object by a device that produces light by any means.

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2. *A sunset provision if the (Dark Sky) Lighting Ordinance passes.* – Mr. Jordan, with second by Mr. Paradis, moved to take no action on this item. Motion passed 5-2 (Nay: Ms. Eveland, Ms. Schloss).

- K. Fire Engine #3** – *Review and possible approval of bids to replace a Fire Department pumper.* – Mr. Paradis, with second by Ms. Schloss, moved to purchase from K&T Fire Equipment a 2009 International 2 door Metalfab pumper at a cost of \$241,243 and to transfer \$30,511 from the Engine #4 Replacement Reserve to the Engine #3 Replacement Reserve to complete funding of the purchase. Motion passed 7-0.
- L. Sewer Budget: FY09** – *Introduction by the Town Manager and possible tentative adoption pending a public hearing on September 2.* – Following a summary of the proposed budget by the Town Manager; Mr. Paradis, with second by Mr. McFarland, moved to introduce the Sewer Budget as proposed and schedule a public hearing on September 2, 2008. Motion passed 7-0.
- M. Water Budget: FY09** – *Introduction by the Finance Director and possible tentative adoption pending a public hearing on September 2.* – Following an overview by the Finance Director Stan Harmon, Public Works Director Chip Reeves, and Water Superintendent Jeff Van Trump; Mr. Paradis, with second by Mr. Garland, moved to introduce the Water Budget as proposed and schedule a public hearing on September 2, 2008. Motion passed 7-0. In addition, Mr. Paradis, with second by Mr. Veilleux, moved to authorize staff to engage Maine Rural Water to once again assist the Town in filing for an increase in rates to improve the financial position of the Water Division. Motion passed 7-0.
- N. School Reorganization** – *Status report by Council's representative to the Reorganization Planning Committee, Councilor Bob Garland.* – Councilor Garland reported following the public forum tomorrow night, the Interlocal Agreement will be passed on to the school boards for their signatures and the Plan will be sent off to the Department of Education. They expect the Plan to be approved by the end of August and ready for the voters in November.

- O. Treasurer's Warrant** – *Request of Treasurer to authorize paid bills.* – Mr. Paradis, with second by Mr. Veilleux, moved to sign the Treasurer's Warrant for paid bills. Motion passed 7-0.

VII. COUNCIL COMMENTS AND SUGGESTIONS FOR NEXT AGENDA

Ms. Schloss commented that the Economic Development Task Force interest in reviewing the issue of parking spaces for business does need to be addressed once again.

Mr. Veilleux applauded the BHYB for their continued fund raising success for cancer with their 7th annual Carol Dyer Luminary. They raised over \$50,000 since they first began seven years ago.

Mr. McFarland suggested forming a traffic study by a consultant group of the downtown traffic flow.

Mr. Jordan ditto Mr. Veilleux sentiments regarding the BHYB.

He also publicly apologized to the Town Council and Code Enforcement Officer Angela Chamberlain for his oversight of code violation, and he has taken care of it.

Ms. Eveland reminded the Town Council of their second meeting on Thursday night of this same week. In addition, she requested they complete the catering form for their goal setting dinner selection.

VIII. MATTERS FOR POSSIBLE EXECUTIVE SESSION:

- A. Salary Plan** – *(To be held in executive session as permitted by 1 MRSA 405.6.A for discussion or consideration of a personnel matter.)* – Mr. Paradis, with second by Mr. Garland, moved to go into executive session at 10:02 p.m. as permitted by 1 MRSA 405.6.A for discussion or consideration of a personnel matter. Motion passed 7-0. Council took a ten minute break before entering into executive session at 10:12 p.m. Council came out of executive session at 10:14 p.m. Mr. Paradis nominated Councilors Ruth Eveland and Sandy McFarland, Finance Director Stan Harmon, and Town Manager Dana Reed to the Salary Committee. The appointments were made by a unanimous vote.

- IX. ADJOURNMENT** – Mr. Paradis, with second by Mr. Veilleux, moved to adjourn at 10:17 p.m. Motion passed 7-0.

Paul Paradis, Secretary